IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 667 OF 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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THE NEW INDIA ASSURANCE CO. LTD. & ANR. - Appellant(s)

Versus

VALIBEN BHIKHABHAI BHARWAD & ORS. - Respondent(s)

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Appearance :

Ms. Rajni Acharya for Appellant(s) : 1 - 2.

Smt. Sangeeta Pahwa for Shri P.M. Thakkar for Respondent(s) : 1 - 7.

None for Respondent(s) : 8.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 01/05/2007

ORAL JUDGMENT

The Insurance Company, being aggrieved by the judgement and award dated 30th November, 1983 passed by the Motor Accident

Claims Tribunal (Auxiliary), Rajkot in Claim Case No.501 of 1981 and others, is before this Court with the submission that the learned Court below was unjustified in fixing the amount of dependency and also erred in applying the multiplier of eighteen.

2. From the records, it does not appear that the appellant-Insurance Company had taken the leave of the learned trial Court for contesting the matter on all possible grounds/defences available to an ordinary litigant. Section 95 of the Motor Vehicles Act, 1939 provided that particular defences would be available to the Insurance Company unless the Insurance Company makes an application before the learned trial Court and also, if such permission is not sought, then, beyond the defences available under Section 95 of the Act, no defence would be available to the Insurance Company. The defence relating to earning, application of the multiplier, the question and quantum of dependency would be outside the scope of Section 95 of the Act. Under the circumstances, the appellant would not be allowed to challenge the findings relating to earning, dependency and selection of the multiplier.

3. However, from the records, it would clearly appear that the deceased was a young man of 29 years and was engaged in the business of milk transport; he was purchasing the milk at the rate of Rs.2/- per litre and was selling at Rs.2.50 per litre. Two of the witnesses examined from the side of the claimants clearly say that they were supplying the milk to the deceased and the deceased was purchasing more than 30 litres of milk at a time. If all this is taken to be correct in absence of any substantive cross objections, then, the minimum income of the deceased would be more than Rs.500/- per month. In a case where the compensation is to be awarded, the future prospects are also required to be considered. The Apex Court has observed that in cases like this if the

deceased is a young man and he has some prospects in future, then, the income earned by the deceased should be added with his future prospects. Under the circumstances and in the opinion of this Court, the learned Court below was not unjustified in holding that the deceased could earn a sum of Rs.900/- per month. The learned Court below has deducted a sum of Rs.150/- towards personal expenses of the deceased and has decided the dependency at Rs.750/- per month or Rs.9,000/- per year. In the opinion of this Court, the learned Court below, in view of the age of the deceased, was not unjustified in selecting the multiplier of eighteen. The learned Court below was also justified in awarding a sum of Rs.5,000/- towards the loss of expectancy of life, loss of company and loss of consortium. The learned Court was not unjustified in awarding a sum of Rs.1,000/- towards the damage occasioned to the rickshaw. The amount of Rs.1,68,000/-, in the opinion of this Court, was justified and proper amount.

4. I find no reason to interfere. The appeal deserves to and is, accordingly, dismissed. However, there shall be no order as to costs.

[R.S.Garg, J.]

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